STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0460

State of Minnesota,
Respondent,

vs.

Amy Christine Lukes-Quinn,
Appellant.

Filed February 1, 2021
Affirmed
Segal, Chief Judge

Hennepin County District Court
File No. 27-CR-15-28571

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Gina D. Schulz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Segal, Chief Judge; Ross, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

Appellant challenges the revocation of her probation following a conviction of first-degree driving while impaired (DWI), arguing that the district court abused its discretion

by admitting hearsay evidence at the probation-revocation hearing and by finding that the need for confinement outweighed the policies favoring probation. We affirm.

FACTS

Appellant Amy Christine Lukes-Quinn pleaded guilty in 2016 to first-degree DWI under Minn. Stat. § 169A.20, subd. 1(1) (2014). This was her seventh conviction of an impaired driving offense, and her fourth in the past ten years. Lukes-Quinn received a stayed prison sentence of 42 months, with a conditional-release period of five years, and was ordered to serve 180 days at the Hennepin County Adult Correctional Facility (ACF). The conditions of her probation included completing treatment and following all recommendations, abstaining from alcohol and other controlled substances, and notifying her probation officer within 72 hours of any contact with law enforcement.

Lukes-Quinn's probation officer (P.O.) had filed four previous probation-violation reports primarily related to her failure to abstain from alcohol use and missed drug- and alcohol- testing dates. Lukes-Quinn admitted to many of the violations and was found in violation of failing to abstain from alcohol in the one proceeding that she contested. In these proceedings, the court imposed additional time to be spent in local incarceration at the ACF and chemical-dependency programming.

The current probation-revocation action was initiated in the fall of 2019 following an October 8 interaction between Lukes-Quinn and law enforcement. The probation-violation report identified several violations, including the failure to (1) abstain from alcohol, (2) submit to random testing, and (3) complete treatment. The report also identified her failure to notify probation within 72 hours of her contact with law

enforcement on October 8, and her refusal to submit to a preliminary breath test (PBT) on October 18, 2019.

The contact with law enforcement on October 8 was initiated in response to a call from Lukes-Quinn's landlord reporting a possible domestic disturbance at Lukes-Quinn's apartment. When police arrived, they learned that Lukes-Quinn and her husband had been at a bar all day. The officer who spoke to Lukes-Quinn told her that it appeared that both Lukes-Quinn and her husband were intoxicated. This conversation was recorded on the officer's body camera and the video was submitted as evidence at the contested probation-revocation hearing.

The October 18 incident involved officers who were sent to arrest Lukes-Quinn based on the P.O.'s initial probation-violation report. The arresting officer noted in the police report that Lukes-Quinn's speech was slurred, her eyes were red and the officer could smell an odor of alcohol coming from her. The report also noted that the officer asked Lukes-Quinn to take a PBT, but that she declined. After this interaction, the P.O. submitted an addendum to his initial probation-violation report referencing these interactions.

At the probation-revocation hearing, the state presented testimony from two witnesses, the officer who conversed with Lukes-Quinn during the October 8 incident and the P.O. The state presented no testimony from the officer who arrested Lukes-Quinn on October 18 or any other witness concerning whether Lukes-Quinn appeared to have consumed alcohol on that date or refused to take the PBT.

Based on the evidence presented, the district court found that Lukes-Quinn "violated multiple conditions of her probation, including: failure to inform probation about contacts with law enforcement, persistent failure to abstain from alcohol, failure to submit to drug testing, and failure to complete treatment." The district court also found that the violations were intentional and inexcusable and that the need for confinement outweighed the policies favoring probation. The district court thus revoked her probation and ordered the balance of her sentence to be executed. Lukes-Quinn now appeals this decision.

DECISION

Lukes-Quinn challenges the revocation decision on two grounds—first, that the district court erred by admitting hearsay evidence concerning the October 18 police interaction without analyzing whether the evidence was necessary or reliable in violation of her due-process rights and, second, by finding that the need for confinement outweighed the policies favoring probation. To revoke probation, a district court must "1) designate the specific condition or conditions that were violated; 2) find that the violation was intentional or inexcusable; and 3) find that the need for confinement outweighs the policies favoring probation." *State v. Austin*, 295 N.W.2d 246, 250 (Minn. 1980). The burden of proof is on the state to establish each element by clear and convincing evidence. Minn. R. Crim. P. 27.04, subds. 2(1)(c)b, 3(1).

I. The district court did not commit plain error by considering hearsay evidence from a police report.

We address, first, the claim that the district court erred by allowing the P.O. to testify concerning statements in the police report from Lukes-Quinn's October 18 arrest. As

described above, those statements relate to whether Lukes-Quinn had consumed alcohol on October 18 and refused to take a PBT. Lukes-Quinn argues that her rights under the Confrontation Clause were violated because the district court accepted the hearsay evidence without considering whether it was necessary or reliable.

As a preliminary question, we must determine the proper standard of review. Lukes-Quinn asserts that we should apply the abuse-of-discretion standard because counsel made a hearsay objection, and evidentiary rulings typically "rest within the sound discretion of the district court." *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). She argues that her objection on the grounds of hearsay necessarily included an objection on the grounds of the Confrontation Clause.

The state claims that the proper standard is plain error, contending that a hearsay objection is not broad enough to include a constitutional objection under the Confrontation Clause and that Lukes-Quinn's assertion of that claim on appeal constitutes unobjected-to error.

The rules of evidence require objections to state the specific ground of the objection unless the ground is apparent from the context. Minn. R. Evid. 103(a)(1). Counsel for Lukes-Quinn objected on the ground that the statement was "double-hearsay." Counsel did not include any reference to the Confrontation Clause or due process and it is not apparent from an objection simply stating "double-hearsay" that a constitutional challenge might be intended. *State v. Rossberg*, 851 N.W.2d 609, 618 (Minn. 2014). Consequently, the plain-error standard of review is applicable.

Under the plain-error standard, relief is available only if there is an "(1) error; (2) that is plain; and (3) the error must affect substantial rights. If these three prongs are met, the appellate court then assesses whether it should address the error to ensure fairness and the integrity of the judicial proceedings." *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998) (footnotes omitted).

With this standard in mind, we turn to the merits of the Confrontation Clause issue. The Confrontation Clause provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . . ." U.S. Const. amend. VI; Minn. Const. art. I, § 6. In *Morrissey v. Brewer*, the Supreme Court held that due process applied to parole-revocation hearings, and that the "right to confront and cross-examine adverse witnesses" was a minimum requirement of due process. 408 U.S. 471, 488-489, 92 S. Ct. 2593, 2603-2604 (1972). The Supreme Court extended those due-process rights to probation-revocation hearings in *Gagnon v. Scarpelli*, concluding that the revocation of probation presented equivalent liberty interests. 411 U.S. 778, 782, 93 S. Ct. 1756, 1759-60 (1973). However, the court emphasized that a revocation hearing is not analogous to a criminal prosecution and "the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial." *Morrissey*, 408 U.S. at 489, 92 S. Ct. at 2604.

This court addressed the constitutionality of hearsay evidence in probation-revocation proceedings in the case of *State v. Johnson.* 679 N.W.2d 169, 174 (Minn. App. 2004). The *Johnson* case involved a challenge to the district court's reliance on a hearsay letter from the defendant's probation officer stating that Johnson had failed to attend a

required M.A.D.D. victim-impact program. This court concluded that, so long as "the defendant has had ample opportunity to present evidence in a probation revocation proceeding," reliance on hearsay evidence, such as the letter about failure to attend a program, does not violate the Confrontation Clause. *Id.*

The holding in *Johnson*, however, does not necessarily end our inquiry. We note that the hearsay evidence in that case involved, as the opinion notes, a "straightforward" question—whether Johnson did or did not attend a specific program. *Id.* at 175. This is the type of evidence that can be readily challenged by a defendant at the probation-revocation hearing. The question of whether or not Lukes-Quinn had ingested alcohol on October 18 is more complex. The evidence that she had done so depends on the observations of the police officer—that Lukes-Quinn slurred her speech, had red eyes and smelled of alcohol—and ultimately comes down to the officer's judgment and credibility. This could, arguably, be the type of evidence that would implicate the right of confrontation, even in a probation-revocation setting. We need not resolve this question, however, because the admission of statements from the October 18 police report does not constitute a plain error affecting substantial rights that must be addressed to ensure fairness and the integrity of the judicial proceeding. *Griller*, 583 N.W.2d at 740.

Here, the district court detailed, in its order, Lukes-Quinn's lengthy history of four prior probation-violation proceedings where sanctions were ordered, along with an informal restructure where the P.O. attempted to get her "back on track" without a formal revocation proceeding. The court also identified five dates where Lukes-Quinn failed to appear for random drug testing within less than four months of the current probation-

violation report. With regard to the failure to complete treatment, the district court noted that she failed to attend outpatient treatment required after her last probation violation, despite the fact that she had received an updated chemical assessment just six weeks prior to the current probation-violation report still diagnosing her with "severe alcohol use disorder." The district court further pointed out its concern that statements made by Lukes-Quinn in a recent assessment demonstrate "her refusal to acknowledge the severity of her alcohol abuse and dependence." Finally, the court pointed to the October 8 police interaction and concluded that the officer involved in this incident "credibly testified [Lukes-Quinn] had bloodshot and watery eyes, slurred speech, and smelled of alcohol" and that Lukes-Quinn failed to inform the P.O. of this contact with police. All of this is independent of the October 18 incident.

The test for whether "substantial rights" were affected by an alleged error is whether there is a "reasonable likelihood" that the hearsay "had a significant effect on the verdict." *Griller*, 583 N.W.2d at 741 (quotation omitted). Based on this record, we can deduce no such reasonable likelihood and conclude that the admission of the hearsay did not constitute plain error.

II. The record supports the district court's finding that the need for confinement outweighed the policies favoring probation.

The second issue raised by Lukes-Quinn is whether there was sufficient evidence in the record to support the district court's finding on the third *Austin* factor, that the need for confinement outweighed the policies favoring probation. "The [district] court has broad discretion in determining if there is sufficient evidence to revoke probation . . . ." and we

review a district court's findings for a clear abuse of discretion. *Austin*, 295 N.W.2d at 249-50. The question of whether the district court made the findings required for revocation of probation is reviewed de novo as a question of law. *State v. Modtland*, 695 N.W.2d 602, 605 (Minn. 2005).

The relevant criteria for assessing the third *Austin* factor, the need for confinement, include whether:

> (i) confinement is necessary to protect the public from further criminal activity by the offender; or
>
> (ii) the offender is in need of correctional treatment which can most effectively be provided if he is confined; or
>
> (iii) it would unduly depreciate the seriousness of the violation if probation were not revoked.

Austin, 295 N.W.2d at 251 (quotation omitted).

Here, the district court found all three criteria were applicable in this case and supported its conclusion with reference to specific facts. First, the district court found that "confinement [was] necessary to protect the public from further criminal activity" because, despite having been afforded four previous treatment interventions since 2018, Lukes-Quinn "persists in alcohol use, placing herself and the public at risk." The district court referenced the P.O.'s report that Lukes-Quinn "is a chronic alcoholic and . . . [d]ue to the lack of cop[]ing skills and awareness, she remains at a high risk of relapse." On the second criteria, the district court found that Lukes-Quinn was "in need of correctional treatment" because she has not been successful at treatment while on probation and because she expressed resistance to entering another inpatient treatment program. This concerned the court "given the seriousness of her alcohol use disorder." The district court thus concluded

that Lukes-Quinn "needs treatment and confinement ensures that she receives it." On the third criteria, the court determined that if probation were not revoked "it would unduly depreciate the seriousness of the violation" because Lukes-Quinn was already granted "multiple opportunities to change her behavior and has not done so."

Lukes-Quinn challenges these findings on the grounds that she completed four treatment programs and, at the time of the current violation report, had an intake appointment scheduled for an outpatient treatment program. Lukes-Quinn also argues that the court's interpretation of her expressing resistance to entering inpatient treatment could just as easily be read as an acknowledgement of the problem, not a refusal to address it. She further argues that nothing in the record supports the court's finding that treatment would be more effective in prison. Lukes-Quinn finally argues that the violations were mainly technical (i.e., missing urinalysis tests), rather than based on alcohol use.[1]

These arguments, however, were made to the district court and the district court, acting within its discretion, was not persuaded. We conclude that the district court made the required findings, those findings are amply supported by the record, and the district court did not abuse its discretion.

Affirmed.

[1] In connection with missed urinalysis testing, the state notes that these were random testing dates. While Lukes-Quinn submitted evidence of negative test results, these were largely for dates where she voluntarily appeared for testing. The state argues, persuasively, that this allowed Lukes-Quinn to be tested on dates of her own choosing when she knew she had not been drinking, and to avoid the random dates where the results may have been positive.